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Filing date: **05/14/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210103
Party	Plaintiff The Coca-Cola Company
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Submission	Motion for Sanctions
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Date	05/14/2014
Attachments	Motion for Sanctions and Default Judgment - COKI COLA HAPPY MOTION.pdf(1034846 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Application No. 85/672,347  
Marks: COKI COLA HAPPY MOTION  
Filed: July 10, 2012  
Published: December 18, 2012

**THE COCA-COLA COMPANY**

Opposer,

v.

**ALBERTO SOLER DBA COKI LOCO,**

**And**

**MIRIAM SOLER**

Applicants.

Opposition No. 91210103

**OPPOSER'S MOTION FOR SANCTIONS AND MOTION FOR DEFAULT JUDGMENT**

Opposer The Coca-Cola Company ("Opposer"), by and through its undersigned counsel and in accordance with Rule 2.127 of the Trademark Rules of Practice, files this Motion for Sanctions requesting default judgment in response to the Request for Reconsideration filed by defendant Alberto Soler on March 3, 2014 (the "RFR"). On February 3, 2014, the Board issued an order expressly precluding Mr. Soler from filing any further motions without permission from the Board. As the RFR violates that order and is a clear attempt to further delay proceedings and rehash arguments already presented and adjudicated, Opposer requests the entry of sanctions, in the form of default judgment, against Mr. Soler.

Further, Mr. Soler's Answer in this matter was due on February 28, 2014. To date no answer has been filed and the entry of default judgment would be proper.

#### **ORDER OF THE BOARD**

In the Board's Order dated February 3, 2014 (the "Order"), the Board advised Applicants that they "may not file any further unconsented pre-trial motions in this proceeding without first (1) contacting both opposer and the assigned interlocutory attorney to coordinate a mutually agreeable time for the Board and the parties to participate in a telephone conference to address the basis for any proposed motion by applicants; (2) both applicants participating in such a telephone conference with opposer and the assigned interlocutory attorney; and (3) receiving the Board's approval to file any proposed motion." *Order* at 10-11. Applicants were cautioned that "If applicants fail to comply with this order, sanctions may be entered against them, including entry of judgment." *Id.*

Applicants neither sought nor received approval from the Board to file the RFR. As such, the RFR violates the Board's Order and Opposer respectfully requests that the Board sanction Applicants for their improperly filed motion. The Order was issued specifically because of Applicants' pattern of improperly attempting to delay these opposition proceedings. As the Board noted in its Order, "Applicants have filed four motions, and one amended motion, all within six months of the institution of this proceeding." *Order* at 10. By filing the RFR without the Board's permission, Applicants have chosen to completely disregard the process and procedures outlined by the Board. The process and procedures were intended to manage and prevent the further delay of these proceedings, and Applicants' willful refusal to follow the Board's order, despite the

threat of sanctions, is further evidence of the abusive and harassing actions the Applicants have taken in these proceedings. Applicants again chose to rehash arguments already considered by the Board rather than allow the proceedings to move forward.

In a case factually similar to the present one, *Patagonia, Inc. v. Joseph Azzolini*, a pro se defendant ignored admonitions from the Board, and the Board found that “any sanction short of judgment would be futile and unfair to petitioner, which brought this case well over a year ago and has been unable, despite diligent efforts, to move it forward, due to respondent’s intransigence.” 109 USPW2d 1859 (TTAB 2014). In *Patagonia*, as in the present matter, the Board “gave respondent notice of [its] intention to impose sanctions and gave [respondent] an opportunity to respond prior to entry of any sanctions.” *Id.* Here, Opposer’s counsel and the Interlocutory Attorney made themselves available to Applicants at the request of Applicant Alberto Soler, but Mr. Soler cancelled a scheduled telephone conference at the last minute (when he was reminded that both Applicants would be required to participate). Shortly thereafter, Applicants filed the RFR without seeking the required permission from the Board.

The Board’s Order also instructed Applicants that certificates of service must be signed by both parties. *Order* at 12. The certificate of service on the RFR includes only the typed names of both Applicants, it does not contain signatures. Again, Applicants have violated the Order.

In light of Applicants’ failure to comply with the requirements set by the Board in its Order, Opposer requests that sanctions, specifically default judgment, be entered against Applicants.



### **DEFAULT JUDGMENT**

Finally, Applicants' deadline to file an Answer in these proceedings was February 28, 2014 and to date, no answer has been filed. In the absence of a timely filed Answer, Opposer requests that default judgment be entered against the Applicant in accordance with Fed. R. Civ. P. 55(b) and 55(c) and TBMP §508. There is no order or motion filed that would have tolled applicant's time to answer. *See, e.g., Super Bakery Inc. v. Benedict*, 96 USPQ2d 1134, 1136 (TTAB 2010)(only an order of the Board formally suspending proceedings has such effect).

### **CONCLUSION**

In conclusion, Opposer respectfully requests that the Board issue default judgment against Applicants.

Respectfully submitted this 14<sup>th</sup> day of May, 2014.

PARKS IP LAW LLC



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CERTIFICATE OF SERVICE

This is to certify that in accordance with 37 C.F.R. §2.119(b), I have this day served the foregoing **Opposer's Motion for Sanctions and Motion for Default Judgment** by electronic mail to the address of record and by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to the Opposer and/or his attorney of record as follows:

Alberto Soler d/b/a Coki Loco and Miriam Soler  
The Red Luna KO  
Soler Law Firm  
11003 NW 33 Street  
Doral, FL 33172

This 14<sup>th</sup> day of May, 2014.

PARKS IP LAW LLC



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